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Other states whose courts have held substantially as our Supreme Court are Delaware, Iowa, Maryland, Missouri, New York, Washington and Wisconsin.<sup>11</sup>

HERBERT HORN.

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### CONTROL OF AUTOMOBILE WITHIN RANGE OF HEADLIGHTS

The case of *Simrell v. Eschenbach*<sup>1</sup> decided recently by the Pennsylvania Supreme Court reiterates the now well established Pennsylvania rule that a driver of a motor vehicle must have it under such control as to be able to stop within the range of its headlights.

In this case the facts show that the defendant's truck was standing on the right side of the Lackawanna Trail at four o'clock A. M. There was no red light or other warning on the rear of the truck. Doctor Simrell drove his car in which his wife was a passenger in such a manner as to collide with the rear end of the truck. Although there was a moon, the early morning was dark and cloudy. On the stand the doctor testified that he could see the truck only when within twenty feet of it and not in time to stop or turn aside, since he was travelling at a speed of about twenty-five or thirty miles per hour. The court held the doctor guilty of contributory negligence, thus defeating his right of recovery but not that of his wife. In the words of Mr. Justice Walling "one reason urged for his inability to have a longer range of vision was a bend in the road south of the point of accident; but after passing this he had a straight range for over sixty feet before coming to the truck."<sup>2</sup>

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<sup>11</sup>*Poynter v. Townsend*, 130 A. 678 (Dela.) (1924); *Hubbard v. Bartholemew*, 163 Iowa 58, 144 N. W. 13 (1913); *Lavine v. Abramson*, 142 Md. 222, 120 A. 523 (1923); *Irwin v. McDougal*, 217 Mo. App. 645, 274 S. W. 923 (1925); *Klauber v. Jackson*, 209 N. Y. S. 209 (1925); *Bauer v. Tongaw*, 128 Wash. 654, 224 P. 20 (1924); *Howe v. Carey*, 172 Wis. 537, 179 N. W. 791 (1920).

<sup>1</sup>303 Pa. 156, 154 Atl. 369 (1931).

<sup>2</sup>*Ibid.* p. 159,

Strict adherence to this rule is noted in the Pennsylvania cases. Where the vision is shortened due to unfavorable weather conditions such as a storm on a dark night, Mr. Justice Kephart in *McGrath v. Pennsylvania Railroad Company*,<sup>3</sup> has stated that:

"The condition of the weather made it more incumbent on the driver to take greater precaution. \* \* \* It is the duty of the driver of a car, driving on a dangerous highway on a dark stormy night, to have his car under such control that he may stop or turn it away when objects intercepting his passage come within the range of the rays of light from his lamps."<sup>4</sup>

The rule as enunciated by the *McGrath Case* has often been approved,<sup>5</sup> and has even been applied to the cars of an electric railway company located at the side of the pavement of a public highway.<sup>6</sup>

*O'Rourke v. Washington City*,<sup>7</sup> is a recent case which is in accord with the rule of the *Simrell* and *McGrath* cases. In this case plaintiff driving up an irregular street grade ran into an embankment blocking the entire street. Mr. Chief Justice Frazer stated the rule to be the following:

"It is the duty of (one) traveling by night to have such a headlight as will enable him to see in advance the face of the highway and to discover grade crossings, or other obstacles in his path, in time for his own safety, and to keep such control of his car as will enable him to stop and avoid obstructions that fall within his vision."<sup>8</sup>

Huddy on Automobiles states the rules in this manner:

"One restriction of his (the driver's) speed is that he shall keep the machine under such control and

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<sup>3</sup>71 Pa. Superior Ct. 1 (1918).

<sup>4</sup>Ibid. p. 3.

<sup>5</sup>Approved in *Brink v. Scranton*, 85 Pa. Super. Ct. 342, 344 (1925); *Serfas v. Lehigh & N. E. R. R. Co.*, 270 Pa. 306, 113 Atl. 370, 14 A. L. R. 791 (1921); *Simrell v. Eschenbach*, supra; *Mason v. Lavine, Inc.*, 302 Pa. 472, 478, 153 Atl. 754 (1931).

<sup>6</sup>*Mars v. Philadelphia Rapid Transit Co.*, 303 Pa. 80, 154 Atl. 290, (1931).

<sup>7</sup>304 Pa. 78 (1931).

<sup>8</sup>Ibid., p. 83.

operate it at such speed that he can stop the machine and avoid an obstruction or danger or another traveler within the distance that the highway is illuminated by his lights. As was said in one case, 'It was negligence for the driver of the automobile to propel it in a dark place in which he had to rely on the lights of his machine at a rate faster than enabled him to stop or avoid any obstruction within the radius of his light, or within the distance to which his lights would disclose the existence of obstructions. \* \* \* If the lights on the automobile would disclose obstructions only ten feet away it was the duty of the driver to so regulate the speed of his machine that he could at all times avoid obstructions within that distance'."<sup>9</sup>

By statute in Pennsylvania automobile headlights are required to disclose the face of the road for a distance of one hundred and sixty feet.<sup>10</sup> Obviously such a statutory provision applies to ordinary conditions, for on a foggy night headlights would not have such a range.

Strict adherence to the Pennsylvania rule is impossible in all circumstances. Where an automobile is just reaching the crest of a grade the headlights throw their beams up into the air rather than along the road on the downward side of the grade. Does the Pennsylvania rule mean that an automobile driver must literally stop every time he approaches the top of a hill, since for a brief moment his headlights do not light up the road? In rounding a sharp curve or bend the headlights shine off to the side of the road. Is the driver of a motor vehicle under a duty to stop because his headlights do not light up the road ahead of him? Undoubtedly the rule that a driver of a motor vehicle must have it under such control as to be able to stop within the range of its headlights in such cases as those suggested above will be reasonably construed so as not to require an automobile to be brought to a standstill in such circumstances. Where the fog is so dense that

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<sup>9</sup>Huddy on Automobiles (6th Ed) sec. 307.

<sup>10</sup>Act of May 1, 1929, P. L. 905, art. VIII., sec. 803. See also *Simrell v. Eschenbach*, 303 Pa. 157 at 159; *Clamper v. Philadelphia*, 279 Pa. 385, 124 Atl. 132, (1924); *Lane v. Mullen*, 285 Pa. 161, 131 Atl. 718 (1926); *Commonwealth v. Bailey*, 91 Pa. Super. Ct. 17 (1927).

headlights cannot pierce it, must the driver have some one walk in front of his automobile to show him the way?

Not all states have followed this rule which is well entrenched in Pennsylvania. The West Virginia Supreme Court in the case of *Fleming v. Hartrick*,<sup>11</sup> refused to apply such a rule where a dangerous situation which the driver had no reason to expect suddenly appeared in front of his car on a dark and rainy night. The facts in this case are somewhat similar to those of the *McGrath Case*,<sup>12</sup> yet a wholly different result was reached. Other courts that have refused to follow the rule in its entirety are those of Oregon,<sup>13</sup> California,<sup>14</sup> Washington,<sup>15</sup> and a few other jurisdictions.<sup>16</sup>

The states that have refused to follow the rule strictly in all cases hold that in cases of stormy weather and of dense fog it would be too great a burden to require the driver of an automobile to stop very frequently because he could see nothing ahead. Such a result would retard traffic on our highways, when traffic must be permitted to move in the highway at all times. These states hold the driver to the standard of driving in a careful and prudent manner, with due regard for the safety of others, ruling that what is careful and prudent will usually be a question for the jury.<sup>17</sup>

NICHOLAS UNKOVIC.

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<sup>11</sup>131 S. E. 558 (W. Va.—1926), 44 A. L. R. 1405. See annotation in 44 A. L. R. on Necessity of Ability to Stop Within Range of Vision.

<sup>12</sup>*Supra*, note 3.

<sup>13</sup>*Murphy v. Hawthorne*, 244 Pac. 79 (Oregon—1926), 44 A. L. R. 1397.

<sup>14</sup>*Ham v. Los Angeles County*, 46 Cal. 148, 189 Pac. 462 (1920); 44 A. L. R. 1405.

<sup>15</sup>*Devoto v. Transportation Co.*, 128 Wash. 604, 233 Pac. 1050, 44 A. L. R. 1407.

<sup>16</sup>See 44 A. L. R. at 1405 et seq.

<sup>17</sup>*Devoto v. Transportation Co.*, *supra*.